MOTION FILED

SEP 16 1971

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IN THE

Supreme Court of the United States

October Term, 1971

No. 45 Original

STATE OF WASHINGTON, STATE OF ILLINOIS, STATE OF ARIZONA, STATE OF COLORADO, STATE OF HAWAII, STATE OF IOWA, STATE OF KANSAS, STATE OF MAINE, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF MISSOURI, STATE OF OHIO, STATE OF RHODE ISLAND, STATE OF VERMONT, and COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, a Delaware corporation, FORD MOTOR COMPANY, a Delaware corporation, CHRYSLER CORPORATION, a Delaware corporation, AMERICAN MOTORS CORPORATION, a Maryland corporation, and AUTOMOBILE MANUFACTURERS ASSOCIATION, a New York corporation,

Defendants.

MOTION FOR LEAVE TO INTERVENE, PROPOSED COMPLAINT, AFFIDAVITS AND BRIEF IN SUPPORT THEREOF

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Counsel of Record:

MAXIMILIAN BADER
I. WALTON BADER
Attorneys for Heart Disease Research Foundation, et al.
Proposed Intervenor

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IN THE

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OCTOBER TERM 1971

NO. 45 ORIGINAL

STATE OF WASHINGTON, STATE OF ILLINOIS, STATE OF ARIZONA, STATE OF COLORADO, STATE OF HAWAII, STATE OF IOWA, STATE OF KANSAS, STATE OF MAINE, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF MISSOURI, STATE OF OHIO, STATE OF RHODE ISLAND, STATE OF VERMONT, and COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, a Delaware corporation, FORD MOTOR COMPANY, a Delaware corporation, CHRYSLER CORPORATION, a Delaware corporation, AMERICAN MOTORS CORPORATION, a Maryland corporation, and AUTOMOBILE MANUFACTURERS ASSOCIATION, a New York corporation,

Defendants.

MOTION FOR LEAVE TO INTERVENE

Heart Disease Research Foundation, a duly certified tax exempt charitable trust and the individual parties, Robert R. Peters and Henry Sassone, hereby move to intervene in the above-entitled original action pursuant to Rule 9(2) and 9(6) of the Rules of the Supreme Court of the United States and Rule 24 of the Federal Rules of Civil Procedure and to be heard orally on October 13, 1971.

Motion for Leave to Intervene

In support of this Motion there are submitted the following documents:

a—Proposed complaint.

b—Affidavit of I. Walton Bader, General Counsel and Trustee of the Heart Disease Research Foundation.

c—Affidavit of Yoshiaki Omura, M.D., Medical Director of the Heart Disease Research Foundation.

d—Brief in support of Motion for Intervention.

Dated: September 15, 1971.

Respectfully submitted,

MAXIMILIAN BADER
I. WALTON BADER
Attorneys for Proposed Intervenors
274 Madison Avenue
New York, New York 10016

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 45 ORIGINAL

STATE OF WASHINGTON, STATE OF ILLINOIS, STATE OF ARIZONA, STATE OF COLORADO, STATE OF HAWAII, STATE OF IOWA, STATE OF KANSAS, STATE OF MAINE, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF MISSOURI, STATE OF OHIO, STATE OF RHODE ISLAND, STATE OF VERMONT, and COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, a Delaware corporation, FORD MOTOR COMPANY, a Delaware corporation, CHRYSLER CORPORATION, a Delaware corporation, AMERICAN MOTORS CORPORATION, a Maryland corporation, and AUTOMOBILE MANUFACTURERS ASSOCIATION, a New York corporation,

Defendants.

HEART DISEASE RESEARCH FOUNDATION, a Charitable Trust of the State of New York, ROBERT R. PETERS and HENRY SASSONE, individually, and HEART DISEASE RESEARCH FOUNDATION and ROBERT R. PETERS and HENRY SASSONE, in behalf of all persons similarly situated and circumstanced,

Intervenors.

INTERVENORS' PROPOSED COMPLAINT

Intervenors' Proposed Complaint

CLASS ACTION

COUNT ONE

Intervenors allege:

1. Intervenor, Heart Disease Research Foundation is a Charitable Trust, duly organized and existing under the Laws of the State of New York, having its offices and places of business at 963 Essex Street, Brooklyn, New York, and 274 Madison Avenue, New York, New York.

2. Intervenor, Heart Disease Research Foundation, is a certified tax exempt organization under the Internal Revenue Code of the United States and is charged, under its Deed of Trust, to aid in alleviating the sufferings of mankind.

3. On information and belief, Defendants, General Motors Corporation, Chrysler Corporation, and Ford Motor Company are corporations duly organized and existing under the Laws of the State of Delaware, having offices and places of business within the territorial jurisdiction of the Southern District of New York.

4. On information and belief, Defendant, American Motors Corporation is a corporation duly organized and existing under the Laws of the State of Maryland, having offices and places of business within the territorial jurisdiction of the Southern District of New York.

5. Intervenors, Robert R. Peters and Henry Sassone, are citizens and residents of the State of New York residing in the New York metropolitan area. These Intervenors are also Trustees of the intervenor, Heart Disease Research Foundation.

Intervenors' Proposed Complaint

6. Pursuant to the original jurisdiction of this Court, the Plaintiffs herein have brought an action against the Defendants relating to the original jurisdiction of the Court pursuant to Article III, Section 2 of the Constitution of the United States and 28 U. S. C., Sec. 1251(b)(3).

7. In the original Complaint brought by the Plaintiffs against the Defendants herein, jurisdiction is also invoked under 15 U. S. C., Sec. 26 and 15 U. S. C., Sec. 1.

8. This Court acquires jurisdiction to entertain the Intervenors' Proposed Complaint pursuant to Rule 9(1) and Rule 9(6) of the Supreme Court of the United States and Rule 24 of the Federal Rules of Civil Procedure.

9. The claims asserted by the Intervenors herein constitute substantial and related claims to the claims asserted by the original Plaintiffs herein and this Court has jurisdiction to entertain said claims in principle of Pendent Jurisdiction.

10. The Intervenors herein are plaintiffs in an action in the United States District Court for the Southern District of New York (Civil Action 71 Civil 1667 HT). This suit alleges claims which are closely related to the claims in the instant action.

11. Representation of the rights of the Intervenors in this suit is, or may be, inadequate and Intervenors will, or may, be bound by a judgment in this action. In addition, there are common questions of law and fact involved in this action and in Intervenors pending action in the United States District Court for the Southern District of New York.

12. The inadequacy of representation of Intervenors' interests in the instant action is shown specifically by the following, without limitation:

a—Plaintiffs in this action merely seek an injunction to require the Defendants to cause to be installed as effective anti pollution control devices as could have been installed in motor vehicles but for the conspiracy alleged in the Complaint. There is no claim for damages including the large number of persons who have become ill or have died from related heart, lung, cancers, liver and kidney diseases. Without damages being awarded against these Defendants any injunction issued by this Court would be meaningless.

b—Despite the fact that automobile pollution has been directly implicated in the increasing cases of heart disease occurring in the United States, the Plaintiffs' Complaint makes no mention of heart disease whatsoever.

c—A Charity's intervention in these proceedings would ensure that any decree entered by this Court would be in the best public interests since the Intervenor-Charity has no "axe to grind" but is merely interested in improving the general welfare of the population of the United States.

d—The injunction sought by the Plaintiffs herein is inadequate. The injunction sought should also require that the Defendants herein devote at least 50% of their annual profits into anti pollution research.

e—In the proceedings before this Court, the Plaintiffs failed to point out that a normal District Court suit would not normally come to trial for at least two years. The subsequent appeals and possible review by this Court could take three years longer. While such proceedings were pending, any injunctive relief would probably be stayed and therefore no relief with respect to the constantly de-

teriorating quality of the air in the United States would be possible. On the other hand, this Court through its original jurisdiction, could clearly and easily dispose of this controversy within a matter of a few months, at most.

13. Intervenors bring this action both as individuals adversely affected by the acts alleged herein and as Trustees of a charitable Foundation whose aim is to alleviate the ills of mankind, particularly those relating to diseases of the heart.

14. There has been a substantial and significant increase in heart, lung, kidney and cancers disorders during the last generation. At the same time, automotive air pollution has consistently increased. In the metropolitan areas of the United States, automotive air pollution represents 75% of all air pollution and overall, the automobile represents 60% of air pollution.

15. The Intervenors further bring this action as representative of a Class pursuant to Rule 23 of the Federal Rules of Civil Procedure and the following sets forth the special circumstances warranting this type of suit:

a—The Members of the Class are the population of the United States residing in the metropolitan areas of the United States, amounting to approximately 125,000,000 persons and there are questions of law and fact common to the Class.

b—It is impractical to join all of the persons affected in one action because the class is so numerous.

c—The Intervenors represent, through their Board of Trustees, approximately four Members of the Class involved. However, by reason of the fact that the Inter-

venor, Heart Disease Research Foundation, is a Charitable Trust, it is uniquely situated to represent and fairly and adequately protect the interest of the Class. The claims of the representative parties are typical of the claim of the Class.

d—Adequate notice can be given to all of the Members of the Class by appropriate newspaper publicity.

e—Failure to permit this suit to proceed as a class action would cause inconsistent or varying adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or would substantially impair or impede their ability to protect their interest.

f—The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish standards of conduct for the party opposing the Class.

g—The questions of law or fact common to the Members of the Class predominate over any questions affecting only individual members and a class action is a superior method of resolving the controversies involved in this action.

16. The Intervenors herein, and all other parties similarly situated have been seriously affected by reasons of acts performed by said Defendants herein. These Defendants have been producing dangerous instrumentalities causing substantial injuries to the population of the United States residents and will continue to do so unless enjoined and restrained by this Court.

Intervenors' Proposed Complaint

17. The Intervenors believe that, on a financial basis, damages of one million dollars for every person so affected by pollution caused by these Defendants would be a reasonable measure of damages. This would amount to one hundred and twenty five trillion dollars, which is an amount far greater than the actual gross national production of the United States and probably equal to the value of all of the assets contained within the borders of the United States at the present time.

18. The above figures are submitted to indicate the reckless abandon with which these Defendants have been conducting themselves and the damages that they have caused to the population of the United States by their acts.

19. If the Defendants were required to embark upon a "crash program" of pollution reduction, the present air pollution crisis in the United States metropolitan areas would be substantially alleviated. The number of deaths from coronary insufficiency would be substantially reduced and the number of persons sustaining coronary attacks might be reduced by a factor of up to 90%. Those people suffering coronary attacks would attain a far better prognosis of recovery.

20. Unless relief is granted by this Court, the pollution levels in the United States will significantly increase within the next few years, further increasing the incidence of heart and lung diseases, shortening of life expectancies and other deleterious factors.

21. One of the solutions to the present problem would be to forthwith bar further manufacture of any vehicle with the internal combustion engine and require the De-

fendants forthwith to produce vehicles with alternative power means.

22. The corporations named below are made Defendants herein. Each of said corporations is organized and exists under the laws of the state indicated and has its principal place of business in the city indicated. Within the period of time covered by this complaint said Defendants have primarily engaged in the business of manufacturing and selling motor vehicles in various states of the United States and also manufacture and sell component parts and accessories thereto:

Defendant Corporation	*State of Incorporation*	*Principal Place of Business*
General Motors Corporation	Delaware	Detroit, Michigan
Ford Motors Company	Delaware	Dearborn, Michigan
Chrysler Corporation	Delaware	Highland Park, Michigan
American Motors Corporation	Maryland	Detroit, Michigan

23. Whenever in this complaint reference is made to any act, deed or transaction of a corporate defendant, such allegation shall be deemed to mean that said corporation engaged in said act, deed or transaction by or through its officers, directors, agents, or employees while they were actively engaged in the management, direction or control of corporate business affairs.

Intervenors' Proposed Complaint

Co-Conspirators

24. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the Defendants in the offense charged in this complaint and have performed acts and made statements in furtherance thereof.

Definition

25. As used herein, the term "motor vehicle air pollution control equipment" means equipment, or any part thereof, designed for installation on a motor vehicle or any system or engine modification on a motor vehicle which is designed to cause a reduction of pollutants emitted from the vehicle, including, but not limited to, any device for the control of emissions of pollutants from the exhaust system, the crankcase, the carburetor, or the fuel tank.

Trade and Commerce

26. Automobiles for the most part are manufactured in the State of Michigan and are shipped therefrom to each of the fifty states of the United States. Some automobiles are assembled in various states of the United States from parts manufactured in the Sate of Michigan and other states. In 1966, 78,315,000 passenger cars and 15,864,000 trucks and buses, exclusive of off-the-road vehicles, were registered in the United States. In that year, 8,604,712 passenger cars valued at more than $17.5 billion and 1,791,587 commercial vehicles valued at more than $3.9 billion were produced in this country. Of the trucks produced, 96,560 were built with diesel motors.

Intervenors' Proposed Complaint

27. Since at least 1952, it has been established that motor vehicles contribute to air pollution by the emission of hydrocarbons, carbon monoxide, oxides of nitrogen and other contaminates.

28. As a result of new and continuing demands that automotive vehicles be equipped with air pollution control devices, a large and growing market for the production and installation of such devices has developed. Motor vehicle air pollution control devices are shipped in interstate commerce, both as original component equipment attached to motor vehicles and as replacements for existing components, from assembly points in various states to the Plaintiff states.

Violations Alleged

29. Beginning at least as early as 1953, and continuing thereafter up to and including the date of this complaint, the Defendants and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in motor vehicle air pollution control equipment.

30. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the Defendants and co-conspirators, the substantial terms of which have been and are:

a—to eliminate all competition among themselves in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and

b—to eliminate competition in the purchase of patents and patent rights from other parties covering motor vehicle air pollution control equipment.

31. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the Defendants and co-conspirators did those things which they combined and conspired to do, including, among other things, the following:

a—agreed that all industry efforts directed at the research, development, manufacture and installation of motor vehicle air pollution control equipment should be undertaken on a non-competitive basis;

b—agreed to seek joint appraisal of patents and patent rights submitted to any of them by persons not parties to a cross-licensing agreement entered into on July 1, 1955, and amended and renewed periodically, and agreed to require "most-favored-purchaser" treatment of all parties to the cross-licensing agreement if any one were licensed by a person not a party to that agreement;

c—agreed to install motor vehicle air pollution control equipment only upon a uniform date determined by agreement, and subsequently agreed on at least three separate occasions to attempt to delay the installation of motor vehicle air pollution control equipment;

(1) In 1961 the Defendants agreed among themselves to delay installation of "positive crankcase ventilation" on vehicles for sale outside of California until the model year 1963, despite the fact that this anti-pollution device could have been installed nationally for the model year 1962 and that at least some automobile manufacturers ex-

pressed willingness to do so, in the absence of a contrary industry-wide agreement;

(2) In late 1962, and extending into 1963, the Defendants agreed among themselves to delay installation of an improvement to the positive crankcase ventilation device, an improvement which the California Motor Vehicle Pollution Control Board had indicated it would make mandatory; and

d—agreed to restrict publicity relating to research and development efforts concerning the motor vehicle air pollution problem.

Effects of Conspiracy

32. The aforesaid combination and conspiracy has had, among other, the following effects:

a—Hindrance and delay in the research, development and manufacture—both by the Defendants and co-conspirators and by others not parties to the agreements alleged herein—and the installation of motor vehicle air pollution control equipment; and

b—Restriction and suppression of competition among the Defendants and co-conspirators in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and

c—Restriction and suppression of competition in the purchase of patents and patent rights covering motor vehicle air pollution control equipment.

d—The level of pollutants emitted into the ambient air by automobiles manufactured following the inception of

the conspiracy was, and is, substantially greater than the level which would have been attained but for the aforementioned agreement, combination and conspiracy with the result that the citizens of the Plaintiff States live in an unhealthy environment contaminated by humanly injurious atmospheric pollutants that have inflicted and continue to inflict upon very large numbers of such citizens great physical suffering, and actual physical injury induced or aggravated by such automotive pollutants.

e—The aforementioned hindrance and delays due to the restriction and suppression of competition in the research, development, manufacture and installation of pollution control devices have resulted in the continuous introduction of inadequate air pollution control devices as original and replacement equipment on motor vehicles purchased and used throughout the United States, despite the existence of technical capacity and knowledge sufficient to develop and produce effective air pollution control devices.

f—All of the Intervenors have been harmed by the Defendants as a result of the conspiracy herein described in that they have been subjected to live in an unhealthy environment contaminated by unnatural atmospheric pollutants emitted by motor vehicles manufactured by the Defendants.

(1) The Intervenors have been compelled to live in an unhealthy environment contaminated by humanly injurious atmospheric pollutants that have caused and continue to cause serious, cumulative and permanent impairment to the general health, comfort and welfare of such citizens.

(2) The quality of the air within the United States has been and continues to be significantly deteriorated to the detriment of the general economy and prosperity.

Fraudulent Concealment

33. Intervenors had no knowledge of the aforesaid combination and conspiracy, or of any fact which might have led to the discovery thereof prior to the instituting of proceedings by the United States of America against the Defendants herein on January 10, 1969. Intervenors could not have discovered the alleged combination and conspiracy at an earlier date by the exercise of due diligence since the combination and conspiracy set forth herein had been fraudulently concealed by Defendants by various means and methods used to avoid the detection thereof.

COUNT TWO

34. Intervenors repeat and reallege the allegations set forth in Paragraphs 1 through 33 of the foregoing Complaint as though fully set forth at length herein.

35. This Court acquires jurisdiction of this cause of action pursuant to the "general welfare" provisions of the Constitution of the United States and pursuant to the fact that this claim is a substantial and related claim to the claims set forth in Count One hereinabove.

36. This is a cause of action brought by the Intervenors in behalf of themselves and persons similarly situated for damages against the Defendants pursuant to common law principles of liability.

37. The Defendants, in continuing to manufacture motor vehicles containing internal combustion engines, are producing dangerous instrumentalities which are adversely affecting the health and welfare of the Intervenors and all

persons similarly situated by polluting the air of metropolitan areas with carbon monoxide, petrol chemicals and oxides of nitrogen.

38. As a result of these activities performed by the Defendants, the Intervenors and all persons similarly situated have become sick, lame, sore and disabled, have incurred medical and hospital expenses and will further incur other medical and hospital expenses and will have their life span shortended in the future.

COUNT THREE

39. Intervenors repeat and reallege the allegations set forth in Paragraphs 1 through 33 and 35 through 38 of the foregoing Complaint as though fully set forth at length herein.

40. Motor vehicles manufactured by the Defendants have in the past been and presently are so designed that noxious wastes and gases are released into the atmosphere in the course of ordinary operation of said motor vehicles.

41. Motor vehicles manufactured by the Defendants and operated on the highways of the United States are responsible for the emission into the atmosphere of the following contaminants: carbon monoxide, oxides of nitrogen, hydrocarbons, lead compounds and other toxic particles.

42. The emissions of contaminants as described above pollute the air and thereby constitute a danger to human health and welfare, in that a direct relationship has been established between the contaminants contained in motor vehicle emissions and chronic respiratory disease, carcino-

gens, liver and kidney disorders and a wide variety of tumors.

43. The aforesaid emissions which pollute the air as described above have resulted from the design and engineering of the motor vehicles manufactured by Defendants and which said Defendants have caused to be distributed throughout the United States.

44. The continued manufacture and distribution of motor vehicles as presently engineered and designed which cause the aforesaid unhealthy and dangerous emissions constitute a public nuisance contrary to the public policy of the federal government. 42 U. S. C., Sec. 1857 (4)(8).

45. WHEREFORE, Intervenors demand:

1. A perpetual injunction restraining the Defendants, their agents, servants and employees, forthwith, from manufacturing, selling or distributing any vehicle containing an internal combustion engine which pollutes the atmosphere with carbon monoxide, petrol chemicals and/or oxides of nitrogen.

2. A preliminary injunction, pending the trial of this action, restraining the Defendants, their agents, servants and employees, forthwith, from manufacturing, selling or disrtibuting any vehicle containing an internal combustion engine which pollutes the atmosphere with carbon monoxide, petrol chemicals and/or oxides of nitrogen.

3. A mandatory injunction requiring the Defendants to forthwith commit 50% of the gross profit made in the manufacture, sale and/or distribution of motor vehicles containing an internal combustion engine to a "crash program" designed to develop a non polluting power plant for motor vehicles.

4. A preliminary injunction pending the trial of this action, requiring the Defendants to forthwith commit 50% of the gross profit made in the manufacture, sale and/or distribution of motor vehicles containing an internal combustion engine to a "crash program" designed to develop a non polluting power plant for motor vehicles.

5. Damages in the sum of one hundred twenty five trillion dollars (trebled to three hundred and seventy five trillion dollars with respect to Count One) together with attorney's fee of three million dollars and the costs and disbursements of this action.

6. Such other, further and different relief as this Court may deem just and proper.

Dated: September 15, 1971.

Yours, etc.

By: I. Walton Bader

Maximilian Bader
I. Walton Bader
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274 Madison Avenue
New York, N. Y. 10016
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

NO. 45 ORIGINAL

STATE OF WASHINGTON, STATE OF ILLINOIS, STATE OF ARIZONA, STATE OF COLORADO, STATE OF HAWAII, STATE OF IOWA, STATE OF KANSAS, STATE OF MAINE, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF MISSOURI, STATE OF OHIO, STATE OF RHODE ISLAND, STATE OF VERMONT, and COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, a Delaware corporation, FORD MOTOR COMPANY, a Delaware corporation, CHRYSLER CORPORATION, a Delaware corporation, AMERICAN MOTORS CORPORATION, a Maryland corporation, and AUTOMOBILE MANUFACTURERS ASSOCIATION, a New York corporation,

Defendants.

Affidavit of I. Walton Bader in Support of Motion for Intervention

State of New York
County of New York—ss.:

I. WALTON BADER, being duly sworn, deposes and says:

I am the General Counsel and a Trustee of the Heart Disease Research Foundation, a charitable trust duly

certified as a tax exempt foundation under the Internal Revenue Code.

The purpose of the Heart Disease Research Foundation is to ameliorate the ills of mankind, particularly those connected with diseases of the heart. As set forth in the accompanying affidavit of the Medical Director of the Foundation, the present levels of automotive air pollution may be directly implicated in the constantly increasing incidence of heart disease in the United States over the last generation.

The Heart Disease Research Foundation has commenced a law suit in the United States District Court for the Southern District of New York (Civil Action 71 Civil 1667 HT) seeking an injunction and damages by reason of the acts of the Defendants herein.

The undersigned believes that the Heart Disease Research Foundation, by reason of its status and charter, is entitled to intervene in this action, as a matter of right because representation of the interest of the applicant may be inadequately presented by present parties to this litigation and the proposed intervenors may be bound by a judgment rendered herein. In addition, the intervenors believe that the applicant's claim and the main action have a question of law or fact in common.

The undersigned further points out that permission by this Court for intervention on the part of the proposed intervenors will expedite the conclusion of the present litigation and will go far toward ameliorating the air pollution problems presently extant in the United States.

It is noted that the Plaintiffs herein merely seek an injunction without damages. It is submitted that relief by injunction would be completely inadequate. On the other

hand, if the Defendants are required to respond in damages and if the damages are to continue so long as vehicles produced by these Defendants continue to emit unacceptable levels of pollutants, the Defendants will make every effort to eliminate the pollution problem and should be successful.

WHEREFORE the undersigned prays that the present Motion to Intervene be in all respects granted.

I. WALTON BADER

Sworn to before me this
15 day of September 1971.

ANNE V. KELLY
Notary Public
State of New York

ANNE V. KELLY
Notary Public, State of New York
No. 41-2075515
Qualified in Queens County
Commission Expires March 30, 1973

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

NO. 45 ORIGINAL

STATE OF WASHINGTON, STATE OF ILLINOIS, STATE OF ARIZONA, STATE OF COLORADO, STATE OF HAWAII, STATE OF IOWA, STATE OF KANSAS, STATE OF MAINE, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF MISSOURI, STATE OF OHIO, STATE OF RHODE ISLAND, STATE OF VERMONT, and COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, a Delaware corporation, FORD MOTOR COMPANY, a Delaware corporation, CHRYSLER CORPORATION, a Delaware corporation, AMERICAN MOTORS CORPORATION, a Maryland corporation, and AUTOMOBILE MANUFACTURERS ASSOCIATION, a New York corporation,

Defendants.

Affidavit of Yoshiaki Omura in Support of Motion for Intervention

State of New York
County of New York—ss.:

YOSHIAKI OMURA, being duly sworn, deposes and says:

I am the Medical Director of the Heart Disease Research Foundation, a charitable trust duly certified as a tax exempt foundation under the Internal Revenue Code.

Affidavit of Yoshiaki Omura

I am a Doctor of Medicine (M. D.) and also am a Doctor of Science (Sc. D. Med.) and the degrees received from duly qualified medical schools. Prior to my appointment as Medical Director of the Heart Disease Research Foundation, I was an Assistant Professor at New York Medical College. I have written a number of research papers relating to heart conditions.

In my opinion, some of the increased acceleration and complications of cardiovascular and pulmonary ailments that have occurred in the last generation are directly connected with the increase in air pollution, particularly the type of air pollution caused by automobile exhausts, including, without limitation, carbon monoxide, petrol chemical hydrocarbons and oxides of nitrogen. In my opinion, it is necessary to preserve the public health of the population of the United States by immediately eliminating, or at least very substantially reducing, the present levels of automobile pollutants. In my opinion, the time table set by the United States Government under the "Clean Air Act" is a small progress but is insufficient and the result of continuing the present pollution of the air of the United States by reason of automobile emissions may result in serious health consequences particularly for the aged and for those suffering from cardiovascular and pulmonary diseases and for the future of the growing young generation who will be exposed to increased levels of such air pollution. In spite of the proposed cut in the amount of undesirable fumes from automobiles by the "Clean Air

Act", the increase in the number of cars in the future may sufficiently negate such a proposed cut.

YOSHIAKI OMURA

Sworn to before this
15 day of September 1971.

I. WALTON BADER
Notary Public

I. WALTON BADER
Notary Public, State of New York
No. 24-5140850
Qualified in Kings County
Commission Expires March 30, 1973

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

NO. 45 ORIGINAL

STATE OF WASHINGTON, *et al.*,

Plaintiffs,

VS.

GENERAL MOTORS CORPORATION, *et al.*,

Defendants.

BRIEF IN SUPPORT OF MOTION TO INTERVENE

Question Presented

Seventeen States have petitioned this Court to entertain an original action against the four major motor vehicle manufacturers and the Automobile Manufacturers Association. The proposed complaint contains a first cause of action for antitrust law violation, a second cause of action for common law conspiracy, and a third cause of action for public nuisance.

The complaint does not seek damages but merely an injunction requiring the Defendants to produce anti pollution devices which will be of the same quality as those that would have been produced were it not for the antitrust conspiracy alleged.

The proposed Intervenors are two persons of the United States residing in metropolitan areas and adversely affected by pollutants produced by motor vehicles, and a Charitable Trust duly certified as a tax exempt entity under the Internal Revenue Code whose purpose is to alleviate the ills of mankind, particularly those caused by diseases of the heart.

These Intervenors have commenced a Civil Action in the United States District Court for the Southern District of New York seeking an injunction and damages against the Defendants (other than the Defendant, Automobile Manufacturers Association). Intervention is sought pursuant to Rule 24 of the Federal Rules of Civil Procedure.

Facts

Intervenor, Heart Disease Research Foundation, is a charitable trust duly organized and existing under the laws of the State of New York and duly certified as a tax exempt foundation under the Internal Revenue Code. Intervenors, Robert R. Peters and Henry Sassone, are Trustees of the Heart Disease Research Foundation and reside in the New York metropolitan area. The Intervenors filed a class action law suit in the United States District Court for the Southern District of New York seeking an injunction and damages in behalf of themselves and all persons similarly situated and circumstanced. The class action, as amended, consists of all residents in the metropolitan areas of the United States.

The Southern District law suit has not been consolidated under MDL Docket No. 31 because this suit was filed subsequent to April 6, 1970. Intervenors have been unaware of the pendency of this litigation and also discovered the same on September 3, 1971.

ARGUMENT

Intervenors should be permitted to intervene in this law suit.

In making this application the Intervenors assume that this Court will permit the filing of an original complaint in Original No. 45. This Motion, is, of course, conditional upon this Court granting the Plaintiffs' application. The Plaintiffs' application comes on for hearing on October 13, 1971 and the Intervenors respectfully request leave to argue orally in support of the Plaintiffs' application.

Assuming that this Court grants Plaintiffs' application to file a complaint, then this Court would have jurisdiction over Intervenors' cause of action on the ground of "Pendent Jurisdiction" since Intervenors' complaint is substantial and related to the complaint made by the Plaintiffs. It is further obvious that the disposition of this case will substantially affect the Intervenors' case now pending in the Southern District of New York. Indeed, while this case is pending, it would be very difficult for the Intervenors to go ahead with their District Court action since the disposition of this litigation would, in effect, control any litigation pending in a lower court. Furthermore, the period of time necessary to complete litigation through the lower courts would be a minimum of five years and, by that time, the adverse effects of air quality by reason of the acts of these Defendants would become insurmountable.

This Court, with respect to original actions has promulgated Rules 9(2) and 9(6) of the Rules of the Supreme Court of the United States. These rules make the Federal Rules of Civil Procedure applicable to original actions and therefore, Rule 24 of the Federal Rules of Civil

Procedure comes into play. This Rule reads in part as follows:

> "Rule 24. Intervention.
>
> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: * * * (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
>
> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: * * * (2) when an applicant's claim of defense and the main action have a question of law or fact in common. * * * (c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. * * *

It has been held that a rather wide discretion is granted to the Court to permit intervention. See, for example, *Mullins* v. *De Soto Securities Co.*, 2 FRD 502; *Justice* v. *U. S.*, 365 Fed. 2nd 312; and *Muesse* v. *Camp*, 385 Fed. 2nd 694.

In addition, to the above, it is respectfully pointed out that the intervention of a charitable foundation in this case would be most helpful to the Court. A charitable foundation is uniquely able to represent the public interest in a suit of this character and can be very helpful to

the Court in aiding the framing of appropriate relief. The Intervenor has no "axe to grind" but is interested primarily in improvement of the public health and elimination of automotive air pollution. The Individual Intervenors, while appearing as individuals for necessary jurisdictional purpose with respect to class actions are, nevertheless, primarily appearing as Trustees of a charitable foundation and also have the public interest in mind.

CONCLUSION

Intervenors' motion should in all respects be granted.

Dated: September 15, 1971.

Respectfully submitted,

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Certificate of Service

I hereby certify that on September 15, 1971, I served a copy of the foregoing Motion and accompanying documents, by mail, upon:

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